



**Linda S. Adams**  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board Santa Ana Region

3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221  
[www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)



**Arnold Schwarzenegger**  
Governor

NOTICE OF PUBLIC HEARING  
and  
HEARING PROCEDURE  
FOR RENEWAL OF WASTE DISCHARGE REQUIREMENTS  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT  
For  
SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, THE COUNTY OF SAN  
BERNARDINO AND THE INCORPORATED CITIES OF SAN BERNARDINO COUNTY  
WITHIN THE SANTA ANA REGION

ORDER NO. R8-2010-0036  
NPDES NO. CAS618036

SCHEDULED FOR JANUARY 29, 2010

## **NOTICE OF PUBLIC HEARING**

On the basis of preliminary staff review and application of lawful standards and regulations, the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) proposes to renew waste discharge requirements for discharges of storm water runoff from the San Bernardino County Flood Control District, the County of San Bernardino, and the incorporated Cities of San Bernardino County, within the Santa Ana Region.

This notice sets forth the procedures and processes the Regional Board will use at this hearing.<sup>1</sup>

### **I. HEARING DATE AND LOCATION**

The Board is scheduled to hold a public hearing to consider this matter at its regularly scheduled board meeting on:

DATE: January 29, 2010  
TIME: 9:00 a.m.  
PLACE: City of Loma Linda Council Chambers  
25541 Barton Road  
Loma Linda, CA 92354

Please check the Regional Board's website (<http://www.waterboards.ca.gov/santaana/>) for the most up to date public hearing location as it is subject to change. If there should not be a quorum on the scheduled date of this hearing, all items will be automatically continued to the

<sup>1</sup> Should it become evident to the Regional Board that no parties desire to participate in a public hearing on this matter, this matter may be placed on the January 29, 2010 meeting agenda as a consent calendar item. Any party may request that the item be removed from the consent calendar prior to, or on the day of, the January 29, 2010 meeting.

next scheduled meeting. A continuance of this item will not extend any deadlines set forth herein.

## **II. BACKGROUND**

Section 402(p) of the Clean Water Act requires that storm water discharges from large, medium and certain small municipalities be regulated under the NPDES permit program. Currently storm water discharges from the San Bernardino County Flood Control District, the County of San Bernardino and the incorporated cities of San Bernardino County within the Santa Ana Region (collectively referred to as the Permittees) are regulated under NPDES No. CAS618036. The existing NPDES permit expired on April 27, 2007 and has been administratively extended. A tentative Order to renew the NPDES permit was issued on June 26, 2009. On August 3, 2009, a public workshop was conducted to seek comments from interested parties and the Permittees. Based on comments received, a second draft was issued on October 22, 2009. Subsequently on December 15, 2009, a third draft was issued.

## **III. NATURE OF HEARING**

This proceeding will be a formal adjudicatory proceeding pursuant to section 648 et seq. of title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

## **IV. AVAILABILITY OF DOCUMENTS**

The proposed Order, Fact Sheet, and related documents are posted on the Regional Board's website at [http://www.waterboards.ca.gov/santaana/water\\_issues/programs/stormwater/san\\_bernardino\\_permit.shtml](http://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/san_bernardino_permit.shtml). These materials will be available for inspection and copying between the hours of 9:00 a.m. and 3:00 p.m. at the following address:

California Regional Water Quality Control Board  
Santa Ana Region  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

Arrangements for file review and/or obtaining copies of documents in the Administrative Record may be made by calling Maria Macario at (951) 321-4583. Responses to comments and other subsequent relevant documents will be available online as they are generated.

The entire Administrative Record may not be present at the hearing. Should any parties or interested persons desire Regional Board staff to bring to the hearing any particular documents in the Administrative Record they must submit a written or electronic request to the Regional Board staff member identified in Section X, below no later than **12:00 pm on January 15, 2010**. The request must identify the documents with enough specificity for Regional Board staff to locate them.



## **V. PARTICIPANTS TO THIS HEARING**

Participants in this proceeding are identified as either "Parties" or "Interested Persons." Designation as a Party is not necessary to participate in this proceeding. Both Interested Persons and Parties will have the opportunity to present written and/or oral comments about the proposed Order. Both Interested Persons and Parties may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Regional Board.

### **A. Interested Persons**

Interested persons include any person or organization that is interested in the outcome of the hearing, but who has not been designated as a party. Interested persons may present written and/or oral comments, as provided in Section VI., A., below, but they may not present evidence. Interested persons are not subject to cross-examination and may not cross-examine witnesses.

### **B. Parties**

Parties are those persons or organizations anticipated to have the greatest interest in the outcome of the hearing. They are generally expected to take a leadership role in presenting any evidence or argument about the nature of the matter under consideration. Parties to the hearing may request to present evidence or to cross-examine other parties' witnesses (if any are called). Parties are subject to cross-examination about any evidence they present.

**At the time of this notice, the only designated party to this proceeding is the San Bernadino County Flood Control District, which is the Principal Permittee of the proposed Order.** Any Co-Permittee may also request and will be granted party status. Requests must be made by submitting a written or electronic request to the Regional Board (as provided in Section X. below) no later than **12:00 pm December 28, 2009**. Requests must be made by an authorized official of the Co-Permittee's jurisdiction, such as the Mayor, City Manager, Director of Public Works, or other appropriate official. The request shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding on behalf of the jurisdiction.

Any other persons or organizations who wish to participate in the hearing as a party shall request party status by submitting a written or electronic request to the Regional Board (as provided in Section X, below) no later than **12:00 pm on December 28, 2009**. Any such requests on behalf of an organization must be made by an authorized representative. All requests for designation as a party shall include the name, phone number, and email address of the person (and if an organization, the person who is designated to receive notices on behalf of the organization). The request shall include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the parties designated above do not adequately represent the person's interest.

Determinations will be based on whether their participation as a party will further the development of the issues before the Regional Board.

**C. Regional Board Staff**

Regional Board staff is not a party to this proceeding. This is a proceeding to modify a permit, which does not involve investigative, prosecutorial, or advocacy functions. Staff's proposals, recommendations, and their participation in this proceeding exist for the purpose of advising and assisting the Regional Board. Likewise, attorneys for the Regional Board will advise and assist the Regional Board, which includes the board members and its entire staff. Given the nature of this proceeding and the limited facts in dispute, assigning a separate staff to "advocate" on behalf of a particular position would not further the development of the issues before the Regional Board.

**VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE**

**A. Public Comments**

Public comments will be accepted in writing before the hearing, within the time specified in Paragraph C., below. Interested persons will also have the opportunity to address the Regional Board orally at the hearing (see Section VIII., below).

Public comments are not evidence.

**B. Requests to Submit Evidence**

"Evidence" includes witness testimony, documents, and tangible objects that tend to prove or disprove the existence of an alleged fact. "Relevant evidence" is evidence that relates to any fact in dispute in the proceeding.

Any requests to submit evidence that is not identified in the Administrative Record Index must be submitted within the time specified in Paragraph C., below. Requests to submit evidence must include a detailed description of the evidence and an explanation about why the evidence is relevant evidence in this proceeding. Requests to submit documentary evidence must also be accompanied by a complete copy of the pertinent portions of the documentary evidence. Any party wishing to present testimonial evidence (i.e., witness testimony), shall submit their entire proposed testimony in writing pursuant to subdivision (c) of section 648.4 of title 23 of the California Code of Regulations, along with the information described in subdivision (b) of that section.

The Parties will be advised prior to the hearing if any additional evidence has been received into the administrative record.

**C. Time to Submit Written Comments and Requests to Submit Evidence**

To be evaluated and responded to by Regional Board staff, included in the Regional Board's agenda packet, and fully considered by the Regional Board members in advance of the hearing, any written comments or requests to submit evidence must be submitted to the Regional Board, as provided in Section X, below, and received at the Regional Board office no later than **12:00 pm on January 15, 2010.**

Pursuant to section 648.4, title 23 of the California Code of Regulations, untimely written



comments will not be accepted into the Administrative Record without a showing of good cause for the delay, and in no event if any party would be unduly prejudiced by the late submittal or if staff or the Regional Board would not have an adequate opportunity to review, consider, and respond to the comments.

## **VII. *EX PARTE* COMMUNICATIONS PROHIBITED**

Parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Regional Board. An *ex parte* communication is a communication not authorized in the California Government Code, to a Regional Board member from any person, about a pending matter, that occurs in the absence of other parties and without notice and opportunity for the parties to respond. The California Government Code generally prohibits the board members from engaging in *ex parte* communications during permitting, enforcement, or other "quasi-adjudicatory" matters. As a permitting proceeding, Regional Board members may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice.

## **VIII. HEARING PROCEDURES**

Adjudicative proceedings before the Regional Board generally will be conducted in the following order:

- Administration of oath to persons who intend to testify
- Regional Board staff presentation
- Interested persons' comments
- Designated parties' presentation
- Questions from the Regional Board to parties
- Questions from the Regional Board to Staff
- Deliberations (in open or closed session)
- Regional Board decision

While this is a formal administrative proceeding, the Regional Board does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Each party will be advised after the receipt of public comments, but prior to the date of the hearing, of the amount of time the party will be allocated for its presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Regional Board staff, as provided in section X, below, not later than **12:00 pm on January 25, 2010** to state how much time they believe is necessary for their presentations. It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Oral comments maybe limited to 3 to 5 minutes each for their comments, in the discretion of the Chair, depending on the number of persons wishing to be heard.



Parties and interested persons with similar concerns or opinions are encouraged to choose one representative to speak, and are encouraged to coordinate their presentations with each other. Repetitive comments will not be allowed.

The Regional Board will include in the Administrative Record written transcriptions of oral testimony or comments that are made at the hearing.

#### **XI. OBJECTIONS TO THE MANNER OF HEARING**

Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Regional Board staff member identified in section X, below no later than **12:00 pm on December 30, 2009**. The Regional Board will endeavor to accommodate reasonable requests.

Objections to (a) any procedure to be used or not used during the hearing, (b) any document or evidence in the administrative record, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Regional Board staff member identified in section X, below no later than **12:00 pm on January 15, 2010**. Any objections related to the amount of time allocated for parties' presentations must be submitted within two business days of notice thereof.

**Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will be addressed prior to and will not be entertained at the hearing.**

#### **X. REGIONAL BOARD STAFF CONTACTS**

Communications with the Regional Board regarding the proposed Order prior to the hearing should be directed to:

**Michael Adackapara**  
**Email: MAdackapara@waterboards.ca.gov**  
**Phone: 951-782-3238**  
Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

Communications with the Regional Board regarding procedural matters prior to the hearing should be directed to

**David Rice**  
**Email: DavidRice@waterboards.ca.gov**  
**Phone: 916-341-5182**  
State Water Resources Control Board  
1001 I Street, Floor 22  
Sacramento, CA 95814

Dated: December 15, 2009